

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1932

No. 5837 **298**

**H. L. RUST COMPANY, A CORPORATION,
PLAINTIFF IN ERROR,**

vs.

J. J. DRURY.

**IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.**

FILED NOVEMBER 1, 1932.

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Court of Appeals of the District of Columbia

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H. L. RUST COMPANY, A CORPORATION,
PLAINTIFF IN ERROR,

vs.

J. J. DRURY, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
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Court of Appeals of the District of Columbia

No. 5837.

H. L. RUST COMPANY, a corporation, Plaintiff in Error,

vs.

J. J. DRURY.

1 Municipal Court of the District of Columbia.

No. L. & T. 512,390.

H. L. RUST COMPANY, a Corporation, Plaintiff,

vs.

J. J. DRURY, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 In the Municipal Court of the District of Columbia.

L. & T. No. 512,390.

H. L. RUST COMPANY, a Corporation, 1001 15th Street N. W.,
Wash., D. C., Plaintiff,

vs.

J. J. DRURY, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

J. F. M. Bowie, being first duly sworn according to law, says that he is the Vice President of the H. L. Rust Com-

pany, a corporation organized under the laws of the District of Columbia, plaintiff in the above-entitled cause wherein J. J. Drury is defendant, and is the person authorized to sign its corporate name to this complaint; that he has knowledge of the facts hereinafter stated and knows them to be true. Said plaintiff is entitled to the possession of premises known as Apt. 106 Somerset House, 1801 16th St. N. W., located in the District of Columbia, and the same is unlawfully detained from it and held without right by the defendant to whom the plaintiff or its assignor had heretofore rented the said premises as a monthly tenant, and whose tenancy and estate has been determined by default in the payment of rent as provided in the agreement under which said tenancy was established.

Plaintiff therefore prays that a summons be issued commanding the defendant to appear and show cause why judgment should not be given against him for the restitution of the possession of said premises and costs of this suit.

(Signed) H. L. RUST COMPANY,
[SEAL.] By J. F. M. BOWIE,
Vice-President.

Subscribed and sworn to before me this 26th day of August, A. D. 1932.

(Signed) GEORGE A. BERRY,
Notary Public, D. C.

Summons.

In the Municipal Court of the District of Columbia.

L. & T. No. —.

H. L. RUST COMPANY, a Corporation, Plaintiff,

vs.

J. J. DRURY, Defendant.

The President of the United States to the defendant, J. J. Drury, Greeting:

You are hereby summoned to appear in this Court on the 9th day of September, A. D., 1932, at 9:30 o'clock A. M., to answer the plaintiff's complaint and show cause why judg-

ment should not be given against you for the restitution of the possession of the premises described in the complaint under oath filed herein by said plaintiff and in case of your failure so to appear and answer, judgment will be given against you by default and costs of this suit.

Witness the Honorable Judges of said Court this August 27, 1932, A. D., 1932.

(Signed)

BLANCHE NEFF,

Clerk.

[Endorsed:] In the Municipal Court of the District of Columbia. H. L. Rust Company, Plaintiff, vs. ———, Defendant. Complaint and summons. ———, 193-. Judgment for plaintiff for possession. Sept. 9-32-C. Sept. 13-D. Sept. 13, 1932-C. Sept. 19-D. (J.) With \$— costs. ———, Judge. Marshal's return: (1.) ———, 193-. Summoned as within directed. ———, U. S. Marshal, by ———, Deputy Marshal. (2.) ———, 193-. Summoned by leaving a copy hereof with a person above the age of sixteen years, in possession of the premises; the defendant not to be found. ———, U. S. Marshal, by ———, Deputy Marshal. (3.) 8-29, 1932. Summoned by posting a copy hereof on door of said premises the defendant not to be found, and no person above the age of sixteen years to be found in possession of, or residing on said premises. (Signed) E. C. Snyder, U. S. Marshal, (Signed) by S. B. O'Dea, Deputy Marshal.

3

Affidavit of Defense.

Filed September 9, 1932.

DISTRICT OF COLUMBIA, ss:

J. J. Drury being first duly sworn, according to law, on oath deposes and says, that he is the defendant named in the caption of the above entitled cause; that he denies that the plaintiff is entitled to possession of premises known as Apartment 106, The Somerset House, 1801 Sixteenth Street, Northwest, in the City of Washington, District of Columbia, and he denies that said apartment and property is unlawfully detained from plaintiff and held without right by him, the defendant; deponent denies that he is a monthly tenant of said premises, and that his tenancy and estate has

been determined because of default in the payment of the rent as set forth in plaintiff's affidavit filed herein.

Deponent says that he originally took possession of said property now in question under and by virtue of an agreement of lease, and that said agreement of lease was for a time in force and effect with the plaintiff, but that by the terms of said agreement it expired approximately two years ago, and has since said expiration date never been renewed; deponent says that at the present time there is no lease agreement between him and the plaintiff, and that he has merely remained over in said premises since the expiration of the aforesaid lease agreement, and that because thereof he is advised and believes he is a tenant by sufferance and entitled as such to a thirty days' notice in writing as provided by law now in force and effect in the District of Columbia before plaintiff can secure restitution of said property. Deponent says that he has not received the
4 said thirty days' notice to which he is entitled by law, or any legal notice whatsoever that plaintiff claims to be entitled to the aforesaid premises, or that said plaintiff demands the possession thereof from the defendant.

Wherefore deponent prays that the suit herein be dismissed as to him.

(Signed) J. J. DRURY.

Subscribed and sworn to before me this 7th day of September, 1932.

(Signed) CHAS. W. PECKHAM,
[SEAL.] Notary Public.

Finding for Defendant.

September 19, 1932.

L. & T. Mins. 49, p. 316.

Comes now the parties hereto and thereupon their cause being heard and submitted the court finds in favor of the defendant.

Judgment on Finding.

September 24, 1932.

L. & T. Mins. 49, p. 381.

It appearing under Rule of Court that judgment on finding in this cause should be entered it is so ordered.

Wherefore it is considered that plaintiff take nothing by this action, that said defendant go hence without day, be for nothing held and recover of plaintiff his costs of defense.

5 *Memorandum of Submission to Court of Bill of Exceptions and Order Making Same Part of Record.*

Mins. 50, p. 190.

October 24, 1932.

Comes now the parties hereto by their respective attorneys of record. Wherefore, the bill of exceptions taken at the trial of this cause is submitted to the court to be settled.

Mins. 50, p. 204.

October 25, 1932.

The Court, having this day signed the bill of exceptions taken at the trial of this cause, and heretofore submitted, now hereby orders the same of record nunc pro tunc.

6 In the Municipal Court of the District of Columbia.

L. & T. No. 512,390.

H. L. RUST COMPANY, a Corporation, Plaintiff,

vs.

J. J. DRURY, Defendant.

Bill of Exceptions.

Be it remembered that the above entitled cause came on for trial before Judge James A. Cobb on September 19, 1932; Joseph T. Sherier appearing on behalf of the plaintiff and Joseph A. Rafferty representing the defendant.

And thereupon the plaintiff, to maintain the issues upon its part joined, gave evidence tending to prove as follows:

A written agreement between the parties dated October 1st, 1930, was offered and received in evidence, by which the plaintiff leased to the defendant Apartments numbered 106 and 108 in the Somerset House, located at 1801 16th

Street, N. W., Washington, D. C., for the term of one year, commencing on the first day of October, 1930, at and for the total rental of \$1680.00, payable in equal monthly installments of \$140.00 in advance on the first day of each and every month thereafter. The agreement contained, among others, the following provisions:

“And it is further agreed, that said party of the second part will at the end of said term or any renewal thereof deliver up the said apartment in the like good order in which it is now, ordinary wear and tear and casualties by fire only excepted, to the said party of the first part, who shall and may thereupon reenter, provided that if at least ten days before the expiration of said term or any renewal thereof,

7 the said party of the first part shall either leave on the premises aforesaid, or serve on the said party of the second part, a notice in writing that possession of said apartment will be required at the end of said term or any renewal thereof, then in the happening of either of said events, the said party of the first part may without further notice immediately re-enter and possess said premises; but in the event that said party of the first part shall not give said notice aforesaid, then, unless the said party of the second part shall immediately surrender said apartment on the day of the end of said term or any renewal thereof, the said party of the second part shall by virtue of this agreement become a tenant by the month, at the rental per month of the monthly installments of rent to be paid as aforesaid on the term tenancy, commencing said monthly tenancy with the first day next after the end of said term; which said monthly tenancy shall be subject to all conditions and covenants of the said lease as though the same had originally been a monthly instead of a term tenancy, and the said party of the second part shall give the said party of the first part at least thirty days' notice of any intention to remove from said apartment, and the party of the second part shall be entitled to the same notice, should the said party of the first part desire possession of said apartment, but in the event said rent is not paid in advance without demand, the said party of the second part shall not be entitled to any notice to quit, the usual thirty days' notice being hereby expressly waived.

And the said party of the second part, for himself and for his heirs, executors and administrators, does hereby cove-

nant to and with the said party of the first part, its successor or assigns, that the said party of the second part shall and will during the term above mentioned, or if after the commencement of said monthly tenancy, if any arise as aforesaid, pay unto the said party of the first part the rent hereby reserved in the manner hereinbefore mentioned, without any deduction whatsoever and without any obligation on the part of the party of the first part to make any demand for the same; and further, that said party of the second part will not use said apartment for any disorderly or unlawful purpose, or in any manner offensive to the other occupants of the house, also that no dogs, cats, parrots or similar pets shall be kept in the apartment, and the said party of the second part agrees to conform to all rules established during the time of this lease for the good order and management of said Apartment House, and will only use the apartment as a private residence, and will not sublet the said apartment or any part thereof, nor transfer possession or occupancy thereof, to any person or persons, nor carry on any business therein, nor assign this lease, without the written consent of the said party of the first part, being first had and obtained; and further, that the party of the second part will pay any and all gas and electric bills as the same may become due and chargeable against the said apartment during the term hereof, making the necessary deposit at the gas and electric light offices to secure the same, and will also pay five (5) cents per call for
8 all outgoing Local messages and toll rates for all outgoing Foreign messages over the private branch exchange telephone installed in said apartment, the same to be payable at the end of each month; that all repairs rendered necessary by the negligence of the party of the second part shall be paid for by the party of the second part.

The party of the second part further agrees that if any installment of rent shall not be paid when the same shall become due and payable, as hereinbefore provided (whether demand shall have been made for the same or not) or if said party of the second part shall in any other respect violate any of the conditions and covenants contained in this agreement, then it shall be lawful for the said party of the first part, its successors or assigns, to recover possession of said premises by reason of a seven days' summons under the provision of the Code of Law of the District of Columbia

regulating proceedings between landlords and tenants, or by such legal process as may at the time be in operation in like cases, the said party of the second part hereby expressly waiving all right to any other notice to quit."

The defendant took possession of and continued to occupy the apartment up to and including the date of the trial, but had failed to pay the rent therefor for part of the month of June and for all of the months of July, August and September, 1932.

And thereupon the defendant, to maintain the issues upon his part joined, testified to the execution of the lease, his default in the payment of rent, as above stated, and that the plaintiff had not served upon him a thirty days' notice in writing to vacate the said premises before the filing of its suit for possession.

And thereupon the defendant closed his case and counsel for the plaintiff announced that it had no testimony in rebuttal. Whereupon counsel for the defendant moved the Court for judgment in his favor on the ground that the defendant was a tenant at sufferance of the apartment in question and that it was necessary, notwithstanding his
9 default in the payment of rent, for the plaintiff to give him a thirty days' notice in writing to vacate said apartment, before the instant suit could be maintained by the plaintiff.

And thereupon, after argument by counsel, the court held that the defendant was a tenant at sufferance, and as such, was entitled to a thirty days' notice in writing to vacate, and, inasmuch as said notice had not been given by the plaintiff, it could not recover in the instant case, and accordingly entered judgment for the defendant, with costs against the plaintiff. To which action of the court the plaintiff then and there, by its counsel, duly excepted and the said exception was entered on the minutes of the court.

And be it further remembered that the said exception taken by counsel for the plaintiff as hereinbefore set forth was so taken by said counsel then and there, and said exception was then and there entered upon the minutes of the judge presiding at the trial, and counsel for the plaintiff then and there prayed the court, and now prays the court,

to sign and seal this Bill of Exceptions, in which is accurately set forth said exception and the substance of all the evidence given at the trial. And, at the request of said counsel, the same is accordingly signed and sealed and made a part of the record in this cause this 25th day of October, 1932.

JAMES A. COBB,
Judge.

Settled by counsel.

JOSEPH T. SHERIER,
Counsel for Plaintiff.
JOSEPH A. RAFFERTY,
Counsel for Defendant.

.10 In the Municipal Court of the District of Columbia.

L. & T. No. 512,390.

H. L. RUST COMPANY, a Corporation, Plaintiff,

vs.

J. J. DRURY, Defendant.

Assignment of Errors.

Comes now the plaintiff in the above entitled cause and assigns for review on appeal errors committed by the Court in the following particulars:

1. In holding that the defendant was a tenant by sufferance and not a tenant from month to month, as provided in the lease.

2. In holding that the defendant was entitled to a written notice of thirty days from the plaintiff to vacate the apartment in question.

3. In refusing to hold that the defendant had waived the thirty days' notice by reason of the provision of the lease and his default in the payment of the rent reserved.

4. In holding that the parties could not, by their agreement, create an estate for one year, to be followed by a tenancy from month to month on the same terms and conditions as applied to the preceeding estate.

JOSEPH T. SHERIER,
Counsel for Plaintiff.

11 In the Municipal Court of the District of Columbia.

L. & T. No. 512,390.

H. L. RUST COMPANY, a Corporation, Plaintiff,

vs.

J. J. DRURY, Defendant.

Designation of Record.

The Clerk, in preparing the Transcript of Record in the above entitled cause, will embody therein the following:

1. The complaint.
2. The affidavit of defense.
3. The finding for the defendant.
- 4.
5. Judgment on finding.
6. Memorandum of submission to court of Bill of Exceptions and order making same part of record.
7. Bill of Exceptions.
8. Memorandum of orders extending time for filing Transcript of Record, if any.
9. Assignment of Errors.
10. This Designation.

JOSEPH T. SHERIER,
Counsel for Plaintiff.

12 Filed Oct. 21, 1932, Municipal Court, District of
Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable James A. Cobb, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between H. L. Rust Company, a Corporation, plaintiff, and J. J. Drury, defendant, L. & T. No. 512,390, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties

aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 21st day of October, in the year of our Lord one thousand nine hundred and thirty-two.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Allowed by
GEORGE E. MARTIN,
*Chief Justice of the Court of
Appeals of the District of Columbia.*

[Endorsed:] Filed Oct. 21, 1932, Municipal Court, District of Columbia.

13 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in Cause at Law, L. & T. No. 512,390, wherein H. L. Rust Company, a Corporation, is plaintiff and J. J. Drury is de-

fendant, as the same that remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 1st day of October, 1932.

[Seal Municipal Court, District of Columbia.]

BLANCHE NEFF,
Clerk.

Endorsed on cover: Municipal Court of the District of Columbia. No. 5837. H. L. Rust Company, a corporation, plaintiff in error, vs. J. J. Drury. Court of Appeals, District of Columbia. Filed Nov. 1, 1932. Henry W. Hodges, Clerk.

(2710)

